IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9634 OF 2004

Smt. Ashwini Abasaheb Honmane ...Petitioner

Versus

Abasaheb Yadav Honmane ...Respondent

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Mr. S.R. Chitnis, Sr. counsel with Mr. V.R. Raje, counsel for Petitioner

Mrs. Pratibha U. Badadare h/f Mr. P. R. Arjunwadkar counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.
DATED: 3RD MARCH, 2005

P. C.:-

1. Heard Mr. Chitnis, the learned senior counsel for the petitioner wife and Mrs. Pratibha Badadare h/f Mr. Arjunwadkar, the learned counsel for the respondent husband.

2. Rule. Respondent waives service.

3. The petition is taken up for final hearing forthwith by consent of the parties.

4. The petitioner was married to the respondent on 21.9.1997 at Mumbai as per the Hindu Vedic Rites and the marriage was registered with the Registrar of Marriages on 12.5.1998. The respondent was at that time serving as Police Sub-Inspector at Vile Parle Police station. It is the wife who has moved

petition No.7-17/2001 for maintenance and in the said proceedings she filed an application bearing No.209 of 2003 for interim maintenance. She contended that while she was cohabiting with the respondent, he had met with an accident at Solapur and while he was hospitalised, one lady by name Sangeeta visiting the respondent and later on the petitioner came to know that the said Sangeeta was the respondent's first wife. She further came to know that from the first marriage, the respondent had two daughters. The respondent was subjecting the petitioner to harassment, ill-treatment and cruelty and on some occasion she was also assaulted mercilessly. She underwent abortion on two occasions and finally to rescue herself from the clutches of the respondent, she reached Mumbai and jointed her parents.

5. Interim maintenance application was opposed by the husband and one of the ground raised while opposing the said application was that the applicant was the second wife and therefore, she would not be entitled to claim maintenance. The learned Judge of the family Court No.4 at Mumbai who persuaded to accept this objection and therefore, he held that the petitioner could not be legally wedded wife of the respondent as her marriage solemnised was in contravention of the provisions of section 5(i) of the Hindu Marriage Act, 1955. The application was

therefore, dismissed by the impugned order dated 20.10.2004.

6. The petitioner wife in support of her application had relied a the decision of the Supreme Court in the case of **Reema Agarwal Vs. Anupam and others [2004 SCC (Criminal) 699].** The learned Judge of the Family Court observed that the said decision had considered expression **"husband"** for the purpose of offence under Section 304-B and 498-A of I.P.C. The Family Court also held the terms of **"Husband"** and **"Wife",** are required to be interpreted strictly where claims for civil rights including rights to property are considered by the Courts. The Family Court held that the decision in the case of Reema Agarwal (supra) was not applicable. The Family Court by relying upon the decision in the case of T.P.K. Natesha Chettiar Vs. Atchiyayee (1975 (1) Ammal Mad.L.J. 142) considered the scope of Section 18 of the Hindu Adoption and Maintenance Act and held that the wife means legally wedded wife. This view of the Family Court may also find support in the decision of the Full Bench of this Court in the case of **Bhausaheb @ Sandu S/o Raghuji Magar Vs. Leelabai w/o Bhausaheb Magar (2003 [4] Mh.L.J. 1019).** However, the view taken by the Full Bench of this Court in Bhausaheb's case is impliedly overruled by the decision of the Supreme Court subsequently rendered on 13.12.2004 in the case

of **Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga (2001 SCALE 391).** In paragraph Nos. 20 and 21, Their Lordships have stated thus:-

> "20. It is well known and recognized legal position that customary Hindu Law like Mohammedan Law permitted bigamous marriages which were prevalent in all Hindu families and more so in royal Hindu families. It is only after the Hindu Law was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(i) of the Act. Keeping into consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependant. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the court to award maintenance at the time of passing any type of decree resulting in breach in marriage relationship.
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> 21. Section 25 is an enabling provision. It empowers the Court in

> matrimonial case to consider facts and circumstances of the spouse applying and decide whether or not to grant permanent alimony or maintenance."

7. In view of the law laid down in Rameshchandra Daga's case, it is clear that the petitioner-wife is entitled to enforce her claim for maintenance though she is the second wife of the respondent. Hence, her application which has been dismissed by the impugned order is required to be restored and decided afresh on merits.

8. In the premises, the petition succeeds partly. The impugned order is hereby quashed and set aside and the application at Exh.7 in interim Application No. 297 of 2003 is hereby restored to the file of the Family Court No.4 at Mumbai. It is directed that the said application be heard and decided on merits by the Family Court as expeditiously as possible and preferably within a period of eight weeks from the receipt of writ from this Court. For hearing, both the parties to appear before the Family Court on 14.3.2005 at 11.00 a.m..

9. Rule made absolute accordingly with no order as to costs.

10. Writ to go forthwith to the Family Court at Mumbai.